an investigation, enforcement action or adjudication," he or she should "direct it promptly to the Counsel's office."

The definition of adjudication provided in the White House policy memo does not seem to directly embrace an agency application like the Hudson casino application. Interior did not, for instance, hold a "hearing" on the Hudson matter. In addition, Interior held substantial discretion under the applicable statutes – IGRA and IRA – in the determination of the application. Arguably, though, an application by a group of tribes who seek license to engage in specific permitted activity, pursuant to defined statutory and agency requirements – those governing operation of a casino on off-reservation land taken into trust for that purpose – implicates "the rights of particular individuals or entities" under constitutional (due process) and common law standards for agency action.[337]

The only White House employee who had contact with an outside individual about the Hudson matter and then sought the advice of Counsel's Office about how to respond to that contact was Avent. No one on Ickes's staff contacted Counsel's Office, though it is unclear whether that was due to deliberate choice, ignorance of the policy or a perception that the contacts policy did not embrace administrative matters such as the Hudson application. The evidence suggests the latter basis as the most likely cause. Jennifer O'Connor, for example, seems to have perceived that the Hudson application constituted a "policy" matter as opposed to an adjudicative or quasi-adjudicative matter, and simply recalled following her habit of providing

[337]Secretary Babbitt himself sensed that greater ethical restrictions and "extra care" should apply to what he termed "quasi-regulatory things where you are issuing a permit or making a specific decision," as opposed to situations where the agency has "pure discretion." Grand Jury Testimony of Bruce Babbitt, July 7, 1999, at 129-30 (hereinafter "Babbitt G.J. Test., July 7, 1999").